

# **Exhibit O**

Alpharetta, GA

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE ) MDL No. 1456  
LITIGATION )  
-----) Civil Action No.  
THIS DOCUMENT RELATES TO: ) 01-12257-PBS  
United States of America, ex rel.)  
Ven-A-Care of the Florida Keys, ) Subcategory No.  
Inc., v. Boehringer Ingelheim ) 06-CV-11337-PBS  
Corporation, et al., )  
CIVIL ACTION NO. 07-10248-PBS )  
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DEPOSITION OF  
VEN-A-CARE OF THE FLORIDA KEYS, INC.

by JOHN M. LOCKWOOD, M.D.

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Taken on June 19, 2009

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 contract price available.</p> <p>2 And if there is no contract price, it</p> <p>3 defaults to the regular cost at McKesson in</p> <p>4 calculating the spread. And so it explains to you</p> <p>5 what number they're using for cost.</p> <p>6 And as I think previously testified the</p> <p>7 regular cost in EconoLink is a -- oh, a ball park</p> <p>8 approximation of what the wholesaler considers</p> <p>9 their acquisition cost or sometimes referred to as</p> <p>10 catalog price.</p> <p>11 I think Mr. Silko in the Texas</p> <p>12 deposition I was describing earlier described the</p> <p>13 regular cost column in EconoLink as WAC. But if</p> <p>14 it's not WAC, it's certainly a very good -- it's</p> <p>15 an approximation of such. And I think that's what</p> <p>16 we used it as.</p> <p>17 McKesson -- he described it as</p> <p>18 McKesson's WAC. I'm not -- I'm not -- which I</p> <p>19 would differentiate from a reported WAC to Texas</p> <p>20 or First DataBank or anyone else.</p> <p>21 Q. Okay. And if you look to the last page</p> <p>22 of Roxane Exhibit 224. At the very end there's a</p>	<p style="text-align: right;">84</p> <p>1 particular document on Roxane 225, which displayed</p> <p>2 all the pricing information in the EconoLink</p> <p>3 database for Roxane drugs.</p> <p>4 A. Yes. And this is exactly the kind of</p> <p>5 thing that -- that you could do, the Department of</p> <p>6 Justice could do, and we did, yes, with this</p> <p>7 database, yes.</p> <p>8 Q. And you showed the Department of Justice</p> <p>9 how to do this?</p> <p>10 A. Oh, absolutely, yes. This is, I mean, I</p> <p>11 think one of the critical things for us that --</p> <p>12 that you can do with EconoLink. And we did the</p> <p>13 same sorts of printouts in Texas using this</p> <p>14 technique. And there are, I believe, in our</p> <p>15 files, examples of that.</p> <p>16 Q. Now, one of the things I noticed in all</p> <p>17 of the databases that we had produced to us by</p> <p>18 Ven-A-Care in this litigation was that there were</p> <p>19 no listings for the NovaPlus Ipratropium Bromide</p> <p>20 product in the EconoLink database.</p> <p>21 Does that sound right to you?</p> <p>22 A. It's either in there or not in there by</p>
<p style="text-align: right;">83</p> <p>1 discussion again of that spread field. And I</p> <p>2 think that section is describing what you were</p> <p>3 saying a moment ago which was that the spread is</p> <p>4 calculated -- calculated as AWP minus either cost</p> <p>5 or the contract special price if one's available;</p> <p>6 is that right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Let's turn to the next document</p> <p>9 in your binder that's been premarked Roxane</p> <p>10 Exhibit 225. And I'll represent to you that this</p> <p>11 is a printout of the -- the October 23rd, 2000</p> <p>12 database in the long form format of all of the</p> <p>13 Roxane drugs.</p> <p>14 A. Yes, uh-huh. I've looked at these.</p> <p>15 Q. And you've had a chance to review this</p> <p>16 and this seems to be a true and correct copy of</p> <p>17 that database?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And what I was able to do or what</p> <p>20 our technical staff were able to do was run the</p> <p>21 query up top as you'll see of all the Roxane NDCs,</p> <p>22 00054 onward, to be able to generate this</p>	<p style="text-align: right;">85</p> <p>1 NDC number.</p> <p>2 Q. But you have no specific recollection,</p> <p>3 do you, of NovaPlus Ipratropium Bromide products</p> <p>4 being listed in the McKesson database?</p> <p>5 A. They're either in there or not. I -- I</p> <p>6 don't recall them being there specifically, but I</p> <p>7 didn't look for that drug in each database. So</p> <p>8 there are 11 of them or potentially data from 12</p> <p>9 data points when you reference the August 31, 2000</p> <p>10 data. But I don't recall specifically.</p> <p>11 Q. And do you recall whether you used any</p> <p>12 of the prices that were in the EconoLink databases</p> <p>13 as examples in any of Ven-A-Care's complaints?</p> <p>14 MR. BREEN: I'm sorry, could you ask</p> <p>15 that question again? Could you read it back,</p> <p>16 please.</p> <p>17 (Whereupon, the requested portion</p> <p>18 of the record was read by the reporter.)</p> <p>19 A. Well, I'm -- if I'm recalling correctly,</p> <p>20 in our initial complaint I believe that we got</p> <p>21 prices from McKesson on Ipratropium with and</p> <p>22 without the Servall contract. And the Servall</p>

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<p style="text-align: right;">86</p> <p>1 contract prices were, in essence, prices that</p> <p>2 would then be in the EconoLink databases. So I</p> <p>3 think -- whether we did that actually before. But</p> <p>4 they would be tied in. And to the extent that we</p> <p>5 used those or continue to use those that would be,</p> <p>6 I think, part of this, yes.</p> <p>7 BY MR. GORTNER:</p> <p>8 Q. Now, looking at the first page of Roxane</p> <p>9 Exhibit 225. This particular printout shows the</p> <p>10 NDCs for one of the versions of Azathioprine.</p> <p>11 A. Yes.</p> <p>12 Q. Do you see that?</p> <p>13 And again, on the field it has the</p> <p>14 published AWP there listed?</p> <p>15 A. Yes.</p> <p>16 Q. And then it has a -- both a price and</p> <p>17 then a contract special price listing. Do you see</p> <p>18 those two fields?</p> <p>19 A. Yes.</p> <p>20 Q. And we've already discussed these fields</p> <p>21 in prior testimony. So just to confirm that your</p> <p>22 understanding is that the contract special price</p>	<p style="text-align: right;">88</p> <p>1 database.</p> <p>2 Q. Right.</p> <p>3 A. We didn't --</p> <p>4 Q. Right.</p> <p>5 A. -- change the fields in any way or</p> <p>6 activate or inactivate fields. We took it as it</p> <p>7 came to us and didn't change it or manipulate it</p> <p>8 in some way.</p> <p>9 And I would have to look at the manual,</p> <p>10 but I'm assuming there is a -- and I think I've</p> <p>11 read it. I know I've read the profit percentage</p> <p>12 field and you can read the manual and it will</p> <p>13 describe to you how to get that to come up and --</p> <p>14 and if you're interested in that, then it will do</p> <p>15 that for you.</p> <p>16 Q. How about the spread field? I don't see</p> <p>17 the spread field on any of these printouts.</p> <p>18 A. That's correct. The spread field for</p> <p>19 whatever reason, as far as I could tell, only</p> <p>20 comes up when you go through the process described</p> <p>21 earlier that we talked about. And it comes up in</p> <p>22 that situation.</p>
<p style="text-align: right;">87</p> <p>1 there, in this case it's \$51.12, would refer to</p> <p>2 the Servall price for that product?</p> <p>3 And the price -- the regular price</p> <p>4 listing of \$59.91 would be the price, I guess,</p> <p>5 someone could purchase from McKesson who didn't</p> <p>6 have a particular contract?</p> <p>7 A. Yes, that's my understanding.</p> <p>8 Q. Now, there's also a field that says</p> <p>9 profit on the right-hand lower column.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And that has an entry of zero. Do you</p> <p>13 know why that would print as a zero?</p> <p>14 A. Well, I think I talked about this in one</p> <p>15 of my earlier depositions. EconoLink is a</p> <p>16 management program. It's not just a pricing</p> <p>17 program. So that you can use it to order drugs,</p> <p>18 analyze your business, and do a variety of things.</p> <p>19 Not just pricing.</p> <p>20 And many of those things are then,</p> <p>21 obviously, described in the manual how to do those</p> <p>22 things. We did not enter data into the EconoLink</p>	<p style="text-align: right;">89</p> <p>1 Q. Okay.</p> <p>2 A. And then it's also described in the</p> <p>3 manual about how to get there. But the spread</p> <p>4 field is not specifically part of either the long</p> <p>5 form or the short form printout. But if you can</p> <p>6 add and subtract, you can effectively do it for</p> <p>7 yourself.</p> <p>8 Q. That's what I was going to ask you about</p> <p>9 next. If you turn to the next exhibit which is</p> <p>10 Roxane Exhibit 226. This is a printout from that</p> <p>11 same October 23rd, 2000 database for just the</p> <p>12 Roxane specific drugs?</p> <p>13 A. Yes.</p> <p>14 Q. And you recognize this document?</p> <p>15 A. Oh, I'm sorry, the next -- yes, this is</p> <p>16 what is generally termed the short form printout.</p> <p>17 And it is probably the one that we used more</p> <p>18 frequently because it puts all of the -- when</p> <p>19 asking for that range, essentially, all of the</p> <p>20 Roxane labeler codes, it puts them all on, what is</p> <p>21 it, about four pages normally.</p> <p>22 Q. Right.</p>

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<p style="text-align: right;">94</p> <p>1 Q. And then looking now at the next page of</p> <p>2 Roxane 226 at the top for -- for Oramorph</p> <p>3 products. There are spreads of about 100 percent</p> <p>4 for those NDCs at the top.</p> <p>5 Do you see that?</p> <p>6 A. Okay, yes.</p> <p>7 Q. And then there are some additional</p> <p>8 spreads for Furosemide being illustrated in Roxane</p> <p>9 226 of approximately a thousand percent again?</p> <p>10 A. Yes.</p> <p>11 Q. And then there are several Ipratropium</p> <p>12 Bromide --</p> <p>13 A. Yes.</p> <p>14 Q. -- products?</p> <p>15 A. Yes.</p> <p>16 Q. And the spreads there seem to be about</p> <p>17 300 percent?</p> <p>18 Do you see that?</p> <p>19 A. Yeah, there's some variation in them,</p> <p>20 but yes.</p> <p>21 Q. And this is all -- again, when I say</p> <p>22 spread, this is according to the calculations that</p>	<p style="text-align: right;">96</p> <p>1 A. Well, all the drugs at least that are</p> <p>2 listed here. I don't know if that's all the drugs</p> <p>3 that Roxane produces. But all of these drugs</p> <p>4 listed here you could easily analyze that, yes.</p> <p>5 Q. And about how long do you think it would</p> <p>6 take to print out -- to print out the short form?</p> <p>7 And what I mean by that is to actually enter the</p> <p>8 search for the Roxane NDCs and print something</p> <p>9 like Roxane 226.</p> <p>10 A. Well, this program prints a little slow,</p> <p>11 but mere minutes. I -- five minutes or less. I -</p> <p>12 - not very long. I wouldn't represent it takes</p> <p>13 very long to do that.</p> <p>14 Q. Let's jump ahead to -- just for a moment</p> <p>15 --</p> <p>16 MR. GORTNER: Jim, what I would like to</p> <p>17 be able to do is go ahead and mark all the</p> <p>18 printouts that I have as exhibits at the end of</p> <p>19 the deposition based upon our -- the stipulation</p> <p>20 we had earlier in terms of the authenticity with</p> <p>21 the caveats you mentioned. And that way I can,</p> <p>22 hopefully, avoid having to trot through a lot of</p>
<p style="text-align: right;">95</p> <p>1 have been made by Plaintiffs in this case?</p> <p>2 A. Yes. Okay.</p> <p>3 Q. And I will make the note for the record</p> <p>4 that for one of the Ipratropium Bromide NDCs,</p> <p>5 which is the 000548402-11 NDC.</p> <p>6 A. Okay.</p> <p>7 Q. There's an AWP that is listed as \$18.44.</p> <p>8 And I think we talked about this earlier. That</p> <p>9 appears to be at least an early error in the</p> <p>10 database. I believe the published AWP was \$44.06</p> <p>11 for that product?</p> <p>12 A. Yes. And we -- we produced the data as</p> <p>13 it came to us, and I don't have an answer for why</p> <p>14 that particular First DataBank update was</p> <p>15 incorrect.</p> <p>16 Q. And so this was the type of data that</p> <p>17 you provided to the federal government in January</p> <p>18 2001, right?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And from that EconoLink database one</p> <p>21 could determine the spreads on all of the Roxane</p> <p>22 drugs as of January 1, 2001?</p>	<p style="text-align: right;">97</p> <p>1 these exhibits which frankly would lead me to ask</p> <p>2 very similar questions, so --</p> <p>3 MR. BREEN: That's fine. I'm just</p> <p>4 thinking, the binder we got here, the binders are</p> <p>5 about 3 inches and -- that, Eric, you put together</p> <p>6 before the deposition.</p> <p>7 The -- most of the pages are made up of</p> <p>8 these long form and short form printouts from the</p> <p>9 EconoLink database. They're all tabbed by date of</p> <p>10 the -- I assume the date of the database that you</p> <p>11 pulled the document from.</p> <p>12 MR. GORTNER: That's correct.</p> <p>13 MR. BREEN: Have we marked the entire</p> <p>14 binder as an exhibit? Have you -- did you do</p> <p>15 that?</p> <p>16 MR. GORTNER: No. But we certainly</p> <p>17 could consider doing that.</p> <p>18 MR. BREEN: That would be my suggestion.</p> <p>19 I think it's pretty well self-explanatory the way</p> <p>20 you've got it broken down unless the witness has a</p> <p>21 --</p> <p>22 THE WITNESS: The only thing I would say</p>